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ONE HUNDRED NINTH CONGRESS

# Congress of the United States

## House of Representatives

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September 22, 2005

The Honorable Stephen L. Johnson  
Administrator  
Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460-0001

Dear Administrator Johnson:

I am writing to express my grave concern about legislative proposals that your agency is developing to authorize sweeping waivers of environmental protections. It appears that this Administration may be using the Katrina catastrophe to justify unrelated, unnecessary, and highly damaging changes to environmental law. I strongly urge you not to compound Katrina's harms by attempting to eviscerate the laws that Americans depend on to provide healthy air, safe drinking water, clean lakes and rivers, and protection from toxic pollutants.

Concerned Environmental Protection Agency employees have provided me with draft legislative language, which was prepared under the direction of political appointees within the agency. While these legislative proposals all target the Clean Air Act, this is apparently part of a broader effort that includes other environmental laws within EPA and other federal agencies.

These legislative proposals are breathtaking in their scope. They would allow a single person, the EPA Administrator, to waive the Clean Air Act, its implementing regulations, and state air pollution requirements approved by EPA.

The legislative proposals have six separate components targeting different portions of the Clean Air Act, and the Act as a whole. Almost all of these proposals would:

- Vest sole authority for waiving laws and regulations in the Administrator alone, subject only, in some instances, to a requirement to "consult" with the governors of states that would be directly affected;
- Allow the Administrator to grant waivers whenever the Administrator finds that "emergency conditions exist," "due to an Act of God or another event that could not have reasonably been foreseen or prevented";

- Allow extended waivers without any time limits;
- Waive current requirements to conduct a rulemaking, allowing the Administrator to waive Clean Air provisions without the opportunity for comment by the public or any affected party; and
- Lack any deadline for notifying the public that a law or regulation has been waived.

One proposal allows the Administrator to waive any Clean Air Act requirement set by Congress, EPA, or the states. The provisions that could be waived under this far-reaching proposal could include the regulations limiting emissions of hazardous air pollutants like mercury or dioxin, the nationwide program for controlling acid rain, and even the health-based standards that limit exposure to ozone, lead, and carbon monoxide.

The Administration has also drafted more specific proposals that allow the Administrator to waive the following Clean Air Act protections, among others:

- Pollution limits for any pollutant from any large industrial polluter, including the pollutants that form smog, particulate matter, acid rain, and toxic air pollutants;
- Pollution limits for any pollutant from non-road engines, such as those used in generators and pumps;
- Requirements for new or expanded large stationary pollution sources, such as power plants or chemical plants, to install modern pollution control equipment; and
- Requirements to monitor and report pollution levels from large industrial polluters.

Another proposal would allow the Administrator to extend, indefinitely, the deadlines for areas with unhealthy air quality to clean up their air. The justification for this proposal states that it is necessary to assure that areas will not be penalized for the air quality impacts of an emergency. Yet even if an area misses the deadline for cleaning up its air, existing law does not apply any penalty: the area simply must come up with a new plan for reducing pollution. There is no explanation provided for how this provision relates to the impacts of Katrina. It would not affect New Orleans, which is classified as having healthy air quality, while other potentially affected cities, such as Baton Rouge, already have until June 2007 or later to clean up.

Yet another proposal would automatically waive for over two years provisions addressing the air quality impacts of transportation projects built with federal funds, such as new highways, for the five parishes in and around Baton Rouge. An additional proposal would allow the Administrator, whenever he or she determines that an emergency exists, to issue any rules

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without public notice and comment. This would allow EPA to make permanent regulatory changes without allowing for input from the public, state and local governments, affected companies, or any other interested parties. It would also potentially shield such regulations from judicial challenge.

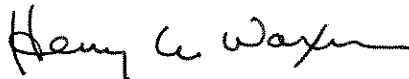
While the documents include purported justifications for the proposals, they do not provide a single concrete example of environmental laws or regulations hindering Hurricane Katrina response efforts. Instead, a number of the proposals appear to be identical to regulatory roll-backs called for by industry prior to Hurricane Katrina. EPA already has extensive discretion to choose not to enforce existing legal requirements during a time of emergency, and EPA's exercise of such discretion has consistently been upheld by the courts. Yet the proposal does not explain why these existing authorities are inadequate.

If EPA does have any evidence of specific requirements that are hindering response efforts and the inadequacy of existing waiver authorities and enforcement discretion, I urge you to bring this evidence before Congress. The public rightly expects us to work together in a bipartisan fashion to address the real needs of the Gulf Region and its displaced residents.

But it would be unconscionable for the Administration to proceed with these proposals. Just as it is wrong for oil companies to use Hurricane Katrina as a reason to gouge consumers, it is wrong for the Administration to use the disaster as an excuse to gut the Clean Air Act. Taking advantage of the incredible hardships inflicted by the hurricane is despicable whether it occurs at the gas pump or at the legislative drafting table.

For these reasons, I call upon you to abandon these misguided and unnecessary efforts to amend the Clean Air Act and any similar efforts directed at the Clean Water Act, the Safe Drinking Water Act, the Resource Conservation and Recovery Act, or other environmental laws.

Sincerely,

A handwritten signature in black ink, appearing to read "Henry A. Waxman", with a stylized, flowing script.

Henry A. Waxman  
Ranking Minority Member